

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TRISTIAN SMITH-KENNEDY,

Plaintiff(s),

vs.

INTERNAL REVENUE SERVICE,

Defendant(s).

Case No. 2:13-cv-00960-APG-NJK

REPORT AND RECOMMENDATION

Plaintiff Tristian Smith-Kennedy is proceeding in this action *pro se*. Plaintiff filed a Complaint on May 31, 2013. Docket No. 1. Because the Court granted Plaintiff's request to proceed *in forma pauperis*, the Court screened the Complaint pursuant to 28 U.S.C. § 1915(e). Docket No. 3. The Court found that Plaintiff's Complaint failed to state a claim and allowed Plaintiff thirty days, until October 4, 2013, to file an Amended Complaint. The Court indicated that "[f]ailure to comply with this Order will result in the recommended dismissal of this case, without prejudice." Docket No. 3 at 4. Plaintiff has neither filed an Amended Complaint nor requested an extension of time in which to file an Amended Complaint.¹

Accordingly, **IT IS THE RECOMMENDATION** of the undersigned United States Magistrate Judge that this case be **DISMISSED**.

NOTICE

Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within 14 days of service of this document.** The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure

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On September 26, 2013, Plaintiff filed a notice that stated that the Post Office returned all of Plaintiff's mail rather than allowing Plaintiff to receive it. Docket No. 6. The Court's Order dismissing Plaintiff's Complaint with leave to amend, however, was mailed to Plaintiff at the address provided by Plaintiff, and was not returned to the Court by the Post Office. *See* Docket.

1 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This Circuit has also
2 held that (1) failure to file objections within the specified time and (2) failure to properly address and brief
3 the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues
4 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
5 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

6 DATED: October 8, 2013.

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10 NANCY J. KOPPE
11 UNITED STATES MAGISTRATE JUDGE
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